

**ECONOMIC DEVELOPMENT & ENERGY COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Economic Development & Energy Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on **September 30, 2002**.

MEMBERS PRESENT:

Legislator Jon Cooper - Chairperson
Legislator Vivian Fisher

MEMBERS ABSENT:

Legislator Fred Towle - Vice Chairperson
Legislator Allan Binder
Legislator George Guldi

ALSO IN ATTENDANCE:

Paul Sabatino, II - Counsel to the Legislature
Barbara LoMoriello - Chief Aide to Legislator Cooper
Tim Motz - Democratic Caucus Aide
Linda Bay - Presiding Officer's Office
Bill Faulk - County Executive's Office
Carolyn Fahey - Economic Development
Joe Muncey - Budget Review Office
Kevin Duffy - Budget Review Office
Mitchell Pally - LIA/SCEA
Bill Davidson - LIPA
Gordian Raacke - Citizen's Advisory Panel
Judith McEvoy
Peter Quinn - Long Island Coalition for Democracy
Other interested parties

MINUTES TAKEN BY:

Ana Grande - Court Stenographer

CHAIRMAN COOPER:

I'd like to welcome everyone to the September 30th meeting of the Economic Development & Energy Committee. Unfortunately, we do not have a quorum. Legislator Towle had requested an excused absence, Legislator Binder called ten minutes before the meeting started that he has a family emergency and Legislator Guldi is AWOL.

So even though we can't vote, however, out of courtesy, if anyone would like to address the Committee, we'd be pleased to hear from you. We do have two people that have filled out speaker cards. First we have Mitchell Pally. Mitch, did you want to address the committee?

MR. PALLY:

I would be more than happy to do so, Mr. Chairman.

CHAIRMAN COOPER:

I'm sorry, I forgot, we should do the pledge first. Thank you very much. And, Legislator Fisher, since you reminded me, if you can lead us.

(SALUTATION)

CHAIRMAN COOPER:

Thank you. Good morning, Mitch.

LEG. FISHER:

We stand on ceremony.

MR. PALLY:

Good morning, good morning. I basically came this morning at the request of the County Executive's Office in my position as Chair of the Suffolk County Electrical Agency regarding I.R. 2023-02, in relation to the funding of the special counsel in relation to litigation before the Federal Energy Regulatory Commission. They had asked me to come down to answer any questions the committee may have about that resolution and I told them I'd be more than happy to be here and answer any questions you might be interested in or at least give you the time line from our perspective as to when we think things may actually happen, if that would help.

CHAIRMAN COOPER:

Please, if you could.

MR. PALLY:

Okay. As you may be, as you are aware in our prior discussions, Suffolk County Electrical Agency has a 211 Proceeding currently going on before the Energy -- Federal Energy Regulatory Commission. That proceeding has gone on for about five or six years. We have a preliminary decision in favor of the Electrical Agency in relation to the Electrical Agency's ability to wheel power to certain ratepayers

in Suffolk County.

What -- that decision has been made by FERC. FERC then asked the two parties, which are obviously the SCEA and LIPA, to try and negotiate a

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price as to what the price would be for the wheeling. The two parties could not do so. As a result, under FERC rules, that then goes to a hearing examiner. That hearing examiner held hearings during the spring and summer of this year. And when the two parties still could not reach an agreement, it is automatically given to a master, I think that's the proper terminology, although I could be somewhat mistaken, at FERC who is empowered, he or she is empowered to actually make a decision.

That process -- but as a result of that, there are evidentiary hearings before that Administrative Law Judge and all the federal proceedings have to go on as per the federal rules.

LEG. FISHER:

Can I just interrupt for just a second?

CHAIRMAN COOPER:

Sure.

LEG. FISHER:

Mitch, what are the stumbling blocks, what's the --

MR. PALLY:

The stumbling block is basically the price. The price that the Electrical Agency would pay to LIPA to wheel the power. The ability to get the power has already been determined by FERC, that we have the authority to do that. They have given us the authority to do that, but we can't wheel the power, because obviously we do not own transmission lines, LIPA does. And the question now is, and only on the issue of what SCEA would pay LIPA to do it, not on whether LIPA has to do it, FERC has already ruled LIPA has to do it, and not whether SCEA can do it, they have already ruled that we can do it, it's strictly a question of price at the moment, what is the price going to be.

LEG. FISHER:

Can I just follow-up on that question, isn't that the problem? I didn't finish reading the article this morning regarding LIPA and the power plants.

MR. PALLY:

Right.

LEG. FISHER:

But isn't that part of the problem that --

MR. PALLY:

Well, the two issues are somewhat related. Obviously in relation to the need of Long Island for additional power and to lower the cost of the power. The Electrical Agency --

LEG. FISHER:

And also what it would cost, what LIPA would have to charge for the use of the transmission of that power.

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MR. PALLY:

Right, right. Those are all related issues, yes.

LEG. FISHER:

So they are, that is an issue that LIPA is addressing on various fronts.

MR. PALLY:

On various fronts with the merchant plans and also with SCEA at FERC in regard to our proceeding, yes.

LEG. FISHER:

Now are there recommended rates for that --

MR. PALLY:

No.

LEG. FISHER:

-- for an authority. So there are no guidelines as to how --

MR. PALLY:

Well, there are FERC rules on the matter, but how a particular situation goes into those rules is obviously up for interpretation. Obviously you have some issues here with regard to LIPA that you may not have in other situations, such as the Shoreham debt issue and other issues relating to that. So FERC, you know, the FERC ruling is that unless the two parties can agree on a price, FERC will issue a price, but it will not do that until after the evidentiary hearings are done.

And that is the process we are in at the moment. We're in the evidentiary hearings before FERC, so that if the parties cannot agree on a price jointly, FERC will actually set a price that both parties have to adhere to.

LEG. FISHER:

Would that set price then impact on LIPA's negotiations with these merchant --

MR. PALLY:

It may, because the merchant, depending on how, what the price is, that could be used as evidence of what FERC believes is a proper transmission price in other issues. So I am sure that while they are not one-to-one, it's not like you're going to take this price and automatically take it to the next situation.

LEG. FISHER:

It would be impact.

MR. PALLY:

It very easily could have an impact, yes.

LEG. FISHER:

Okay.

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MR. PALLY:

Very easily, yes.

CHAIRMAN COOPER:

Mitch, are you able to say how far apart you are between what you're requesting or is that confidential?

MR. PALLY:

That's hard to say. I mean, we're, we're restricted by confidentially rules before FERC in relation to any numbers, and I apologize for that, but I don't want to have the Federal Administrative Law Judge coming down on us for doing that. It's clear to say at the moment that we are far enough apart for FERC to start the evidentiary hearing process, because they have a whole process that they go through before they get to that point. And if they believed the parties were not far apart, they could, they could try and work out a settlement between the two parties.

That has not happened in the time period, so FERC believes that the ability of the two parties to settle on their own is enough separation there that they have now had to start an actual evidentiary hearing which will lead to an actual FERC decision. That decision hopefully will come down in the spring.

That is the schedule we are operating under at the moment. Going between now and the spring, we have been told that's when a final decision will be made.

Now, notwithstanding that, and assuming FERC makes a final decision, I

don't want to give the assumption or the impression that that, that that will be the end of it, because either party can, of course, appeal a FERC decision to the Federal Court of Appeals in Washington. That is, of course, you know, one is allowed to do that under federal law, but that may depend to some degree obviously on the price that FERC sets, assuming the parties cannot agree on a settlement between now and then. So that is the schedule we are operating under.

LEG. FISHER:

Okay. So going back to the resolution, Mitch, which is asking for a budget amendment to three hundred and thirty thousand dollars more or less.

MR. PALLY:

Right.

LEG. FISHER:

Now, if we were to take the case further to Washington, what kind of ballpark additional funds would we be talking about?

MR. PALLY:

My understanding these are the funds necessary for the completion through this fiscal year, which is the -- when this fiscal year ends. My understanding from the County Executive's Office is that they have requested in the 2003 operating budget, which, of course, you will be pursuing in the next couple of weeks, funds for the 2003 calendar year in relation to what that --

LEG. FISHER:

What funds?

MR. PALLY:

I don't recall that. That is included in the amount that the County Attorney requests for all special counsel proceeding, not just this one. I have not seen that this one has been separately discussed in that regard. But this one is a specific allocation for this purpose, because of the fact that when we, when we were looking at it last year, when the County Executive's Office was looking at it last year and the County Legislature, there was no understanding that this would proceed for this long a period of time and we would actually get into a situation where there actually are FERC evidentiary hearings going on.

LEG. FISHER:

Mitch, we're expending taxpayer money.

MR. PALLY:

Yes.

LEG. FISHER:

Will there be, will taxpayers, will ratepayers realize a savings that would justify the expenditures --

MR. PALLY:

Well, we sure hope so. You know, the, the, the electrical -- and Peter Quinn who is a member of the Electrical Agency is here in another capacity, but Peter -- I mean we all, all seven members of the Electrical Agency agree that we're not going to do this unless it saves ratepayers money.

The problem at the moment is we don't know whether it's going to save ratepayers money because we do not know what the transmission costs are going to be. So while I would be, you know, it's right, and until I know what that last piece is, I know what we can get the power for, that number, of course, is also restricted under FERC rules, but I know what we can get the power for. The question is getting the power is it doesn't do us any good unless we can get it to the places where it's supposed to get to, the homes in Suffolk County.

We don't know that until FERC issues a ruling and says, here's the price, then we know what the price is, both in the transmission costs and the costs of the electricity, and then be able to say this is what we can save the ratepayers of Suffolk County, whatever that number is. And I don't want to give an example, because I don't know that for the moment, but once we know that, then the Electrical Agency will make its final determination to actually do it or not do it.

We're not going to do it if it's not going to save ratepayers money, there's no point. We're very hopeful, however, from our reading of the cases and in the impression that we get from FERC, is that we will get a number that will save ratepayers money and then we will implement the program to do that and then all the ratepayers in Suffolk County will save some percentage each year over a period of time.

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LEG. FISHER:

Has Budget Review looked at these numbers and where the determination would have to fall in order for the ratepayers to realize a savings? Because it seems, Mr. Chair, it seems as if this were a crapshoot. We're throwing money in hoping that -- I mean, look what happened with us with police arbitration. It's just we're putting money in hoping that the determination will come down in the favor of the Suffolk County ratepayers, and unfortunately when we went into arbitration with the police, I know it's a whole different situation, but it's as if we're leaving so much of our own fiduciary responsibilities in the hands of a third party.

MR. PALLY:

There is no question. I mean the, the, the, the first part of it --

LEG. FISHER:

The question still stands, I know I kept talking.

MR. PALLY:

I'm sorry for interrupting.

MR. DUFFY:

We wouldn't have that information readily available. Most of the information, as Mr. Pally has said, is confidential and we would not have access to that confidential information. What I do know is that they requested a, this resolution requests a transfer of money from state retirement of approximately three hundred and some odd thousand dollars in order to continue the FERC action.

LEG. FISHER:

But isn't one of the squeezes that we have this year in our budget the fact that we have to put so much more money into the retirement system?

MR. DUFFY:

That's the 2003, which is requesting the 2002 state retirement, which my understanding there's sufficient funds or excess funds there at the moment. And what would happen with those funds is that they would flow for fund balance and what this will do is that will take them and they will not flow to fund balance, but we will be, if transfer occurs, they will be used to pay this expense out of the Law Department's 456 account.

LEG. FISHER:

But if I understood you correctly, Mr. Pally, this is not the end of this litigation, you expect funds to -- well, do you recall in the operating budget for 2003 how much is set aside for this, to continue this litigation?

MR. DUFFY:

There's a 456 account in the County Attorney's Office, and my recollection, which may not be correct, the number four hundred thousand I think is what had been proposed as the continuation of the litigation. But the County Attorney's Office gives illustrative examples and he has a total amount as to what he will use the 456 money for, the same as the Legislature does in its 456 account.

MR. PALLY:

For outside counsel .

MR. DUFFY:

For outside counsel.

LEG. FISHER:

Outside counsel. Thank you. Thank you, Mitch.

MR. PALLY:

I don't think there's any question, in following up your statement, there's no question that this is a situation where we are being, where our decision is predicated on the decision of others. There is no question about that. And under the FERC rules, for us to do this is the only way to go. And we've been doing it now for five or six years.

We are closer now than I think we've ever been. This year we got a decision from FERC saying we had the authority to do it, which LIPA had clear -- LILCO before and then LIPA had challenged our ability to do it. FERC clearly indicated in its decision that Suffolk County Electrical Agency has the authority to bring in power on its terms. The only question now is what the price will be.

I don't think there's any question that FERC in making that decision understood, and we made it very clear to them that we were not in this for the sake of just making decisions, we're in this for the sake of saving the ratepayers of Suffolk County money, otherwise we wouldn't have done it in the first place. And we still hope to be able to do that.

Unfortunately, it's not just our decision to make under the rules as they're laid out under the federal law, FERC is the one that makes that decision. It's almost like the old Public Service Commission making the decision for LILCO in relation or in energy issues relating to Long Island. Here is a situation where because of the way the statute is written, FERC is the only one that can make that determination.

Our hope is that we will receive a very positive determination. We have received positive determinations from FERC all the way down through the process. We are closer now than we have ever been in relation to getting a decision, which we hope will be positive. And our belief is that, you know, all the money we have spent already would be wasted if we did not see it to fruition, and say we're making an investment in the future for Suffolk County ratepayers in the hope and anticipation that they will save money over the period of time in the next couple of years once the power is actually processed. That's the only way I can do that.

But can I give you a guarantee that FERC is going to give us a decision? I wish I could, but I can't. I'm just hopeful. And our

counsel, our outside counsel in Washington is very hopeful. But that's all I can tell you at the moment.

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LEG. FISHER:

Thank you.

CHAIRMAN COOPER:

Mitch, could you tell us in your estimation who would benefit, if you are ultimately successful, who would benefit from the rate reductions, would they be select commercial customers, would they be homeowners?

MR. PALLY:

No, this application is intended to serve all residential customers in Suffolk County. And we have already made a decision at the Electrical Agency that, assuming we get the authority to do it, get a price that we want to do it at and actually do it, that we would do it for everybody. We will not pick and choose certain sections of the County to get it and others not to or my house gets it and the guy next to me doesn't get it, I'm not getting into that. This will be spread across all the residential ratepayers of Suffolk County.

Now, obviously the larger the number of ratepayers, the smaller the benefit to each person, obviously, because if I gave it, if we gave the whole benefit to one person as opposed to giving it to two hundred thousand people, obviously the benefit is smaller depending on the larger number. But we think it's only fair since the, since all of them are taxpayers and all of them meet the class, which is the residents' class in Suffolk County, that that power would be transmitted to everybody, and, therefore, everybody would receive a portion of the savings.

It's like we did for a number of years and we still do it at certain times of the year, you will see on your LILCO bill and your LIPA bill now an MDA credit. That is the credit the Electrical Agency gets for taking in low cost power from the power authority. And while it may be seventy-five cents for each residence, obviously that adds up, but that's because we do that for everybody and not for selected groups or people living at a certain location or people with certain incomes, we just, we spread it out for everybody, because we did not want to get into a situation of picking and choosing.

CHAIRMAN COOPER:

Okay, Mitch. Thank you very much. Appreciate you coming down.

MR. PALLY:

Okay. If I can add one other thing while I'm here? I just also on behalf of the Long Island Association I will take off one hat and put on my other hat for the moment, I wanted to indicate to you our

support for Resolution 2037, the appointment of Judy McEvoy as Commissioner of Economic Development.

Notwithstanding the fact that Judy used to work for me when I came down from Albany, we'll leave that aside for the moment, but there is no one more energetic, more enthusiastic, nor I think could do a better job for Suffolk County than Judy McEvoy and we strongly support her nomination to this position.

CHAIRMAN COOPER:

Thank you, Mitch. And I agree a hundred percent.

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MR. PALLY:

Thank you.

CHAIRMAN COOPER:

Next speaker we have, Peter Quinn. Good morning, Peter.

MR. QUINN:

Good morning.

LEG. FISHER:

Good morning Peter.

MR. QUINN:

Good morning John, good morning Vivian. Let me just echo quickly Mitch's sentiments about the Electrical Agency's struggle. It has been a protracted one. I mean the legislation creating the Suffolk County Electrical Agency occurred back in 1983.

While nothing much was done with the agency over a period of nearly ten years, it wasn't until FERC in 1992 issued order 636 to deal with retail and wholesale wheeling of power that Suffolk got involved again. And the issue was challenged assiduously by LILCO who opposed our filing of the 211 issue and then LIPA did the same thing. So that we've had in the last I think Mitch said six years of serious challenge.

But fortunately a year ago this week, September 27th, last year, or 28th, the FERC issued the order saying that Suffolk County Electrical Agency had the right to find suppliers of electricity and then negotiate with them over the power, over the price for power. And that was strictly for residential. There is another category of commercial that had, that FERC chose not to decide upon. So where we're at is we're still negotiating over the price for wheeling the power on the transmission lines.

LEG. FISHER:

Peter, I'm confused. Didn't Mitch just say that this was for everyone and not just residential or just commercial, are you saying now that it can't be used for commercial?

MR. QUINN:

What FERC ruled on was just residential. There was another facet of the proposal that included commercial, but FERC didn't choose to rule on it at this time.

LEG. FISHER:

So at this point in time --

MR. QUINN:

So it's segmented, it's segmented at the moment.

LEG. FISHER:

Okay.

MR. QUINN:

But that's a process that no doubt will continue and we're hopeful

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that FERC will issue some decision immediately after the evidentiary hearing process is concluded.

LEG. FISHER:

Okay.

MR. QUINN:

But I'm here for another reason.

CHAIRMAN COOPER:

Your time is up.

MR. QUINN:

The fact is I don't know Judy McEvoy. I saw that she was being appointed to become the Director of the Industrial Development Agency, a branch of the, part of the executive branch of government for a salary of a hundred and three thousand dollars. And I thought, well, despite her past experiences, she's a newcomer to government in that sense, and since the County has now suggested that it has a hundred and eleven million dollar deficit, that it is thinking of returning, increasing property taxes, eliminating past sales tax, eliminations, excuse me, and involving itself in layoffs and then suggesting that this is all, the problem of the deficit is all increases in pension fund assessments and mandated state costs on Medicaid, I would submit to you that maybe it's time for this Legislature to consider a moratorium on the Industrial Development Agency.

And the reason I say that to you is in looking at last year's efforts by the Industrial Development Agency, they were involved in loans of a hundred and fifteen million dollars. Now, it's --

LEG. FISHER:

Excuse me.

MR. QUINN:

Although those loans are paid back by the corporations, there is nonetheless arrangements that are made to the companies that provide them with property tax abatements, sales tax abatements and mortgage transfer tax eliminations. Sometimes only one, sometimes all three categories are provided the companies allegedly on the notion that they will either maintain or create jobs. And yet, in looking at their report, I saw seven out of the fourteen companies --

CHAIRMAN COOPER:

I'm sorry, Peter. You can continue.

MR. QUINN:

-- I noted that seven out of the fourteen companies did not provide their job data, either what they had prior to their receiving the IDA or the number of new jobs which they created.

Now, that could either be the fault of the company not supplying the data or else it's the fault of the IDA for not providing it in their report, but the fact of the matter is, when one adds up the tax abatements of various kinds or tax eliminations, it comes to over four million dollars.

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LEG. FISHER:

Excuse me, Peter. I would just like to ask Counsel a question because I'm confused about something.

MR. QUINN:

Sure.

LEG. FISHER:

Mr. Sabatino, is it the -- does the Commissioner of the Department of Economic Development have the authority to set a moratorium on industrial development zones?

MR. SABATINO:

No. The way that would have to work is the seven members of the Industrial Development Agency, each of whom is appointed by the County Legislature to serve at the pleasure of the County Legislature, would have to adopt an internal resolution. Your ability to influence that hinges on the appointments that you make --

LEG. FISHER:

Okay. But it wouldn't be --

MR. SABATINO:

It would not be the Commissioner.

LEG. FISHER:

-- the authority of the Commissioner?

MR. SABATINO:

That's correct.

LEG. FISHER:

As you were speaking, that's what I had asked Legislator Cooper, and I just wanted to clarify. I don't think that the Commissioner has that authority.

MR. QUINN:

No. I know that they are an autonomous body, I know that the responsibility for the loans does not fall on the County, the State or the agency, but it seems to me imprudent and unwise when you have an agency providing tax reductions to select companies on the grounds that they allegedly will create or maintain jobs.

And according to my figures, which is different from Pearl Kamer's figures where she gives an annual report on the IDA, I come up with five hundred and -- five hundred and sixty-four jobs. And one company, ADP, provided two hundred and sixty-seven or nearly half of those total jobs out of fourteen companies.

So I have to ask, what is the IDA doing in a time of financial and fiscal crisis to Suffolk County or what do they plan on doing in terms of continuing this incentive giveaway process where most of the jobs that are created are really secondary, that is in the construction trades industry, where buildings are constructed and construction trades workers are put to work, but I even have to question those, because some of them are office buildings, some of them are

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warehouses.

And while Kamer insists that the average income benefit amounts to forty-nine thousand dollars and change per employee hired, I submit to you that in a warehouse or in an office building, you have -- are more likely to find lower paid, unskilled workers or clerks in those office buildings who don't receive anywhere near the forty-nine thousand one hundred plus average salary, unless you're including all the administrators within, that are heads of those companies who receive

substantially more.

So while the Legislature can't do anything specifically, since this was a law that was created back in 1975 by the State Legislature to encourage economic development, I question what kind of economic development has been occurring when you're giving away taxpayer dollars, and not only County taxpayer dollars, this goes on with town governments and even some school districts under the 285-B State Law, banking law, there are school districts that are losing money as well through pilot arrangements.

So I question how government is running itself into the ground through these independent or the industrial development agencies and serving a select clientele, the construction trades and some select businesses who benefit while all the other companies are dutifully paying their taxes, not expecting any special treatment and I submit that they are not well served by this kind of Industrial Development Agency. Thank you.

LEG. FISHER:
Thank you, Peter.

CHAIRMAN COOPER:
Thank you very much, Peter.

Just for the record, I wanted to point out that I had previously interviewed Judy McEvoy at my District office before the Committee meeting. Legislator Fisher spoke with Ms. McEvoy. So I am going to be filing a discharge motion on Tuesday to bring the bill appointing her before the full Legislature and I would hope that I would have strong support.

There being no further business before the Committee, I make a motion to adjourn.

LEG. FISHER:
I'll second that.

CHAIRMAN COOPER:
Thank you very much.

LEG. FISHER:
And you do have that Ms. McEvoy was present here for the meeting? Okay. She did attend and was prepared to answer questions.

(THE MEETING WAS ADJOURNED AT 11:24 A.M.)